

CIVIL CASE MANAGEMENT PLAN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

John K. Luce, II

No. 1:21-CV-718 GTS/DJS

VS

YRC, Inc., et al.

IT IS HEREBY ORDERED that, Pursuant to Rule 16(b), Federal Rules of Civil Procedure, a status and scheduling conference will be held in this case before the Honorable DANIEL J. STEWART, United States Magistrate Judge on **July 27, 2021, at 9:30 AM** at the United States Courthouse, at Room Number 406, Albany, New York.

Counsel for all parties or individuals appearing *pro se* in the above-captioned action are directed to confer in accordance with Fed. R. Civ. P. 26(f) with respect to all of the agenda items listed below, no later than **twenty-one (21) days** before the scheduled Rule 16 Conference. Following that Rule 26(f) meeting, a report of the results of the conference, in the format set forth below, must be filed with the clerk no later than **seven (7) days** prior to the scheduled Rule 16 conference with the Court. Matters which the Court will discuss at the status conference will include the following: (insert a separate subparagraph as necessary if parties disagree):

1) JOINDER OF PARTIES: Any application to join any person as a party to this action shall be made on or before 9/30/21.

2) AMENDMENT OF PLEADINGS: Any application to amend the pleadings to this action shall be made on or before 8/30/21.

3) DISCOVERY: All discovery in this action shall be completed on or before 12/27/23.
(Discovery time table is to be based on the complexity of the action)

4) MOTIONS: All motions, including discovery motions, shall be made on or before 1/27/23.
(Non-Dispositive motions including discovery motions may only be brought after the parties have complied with Section IX of General Order #25)

5) **EXPERT WITNESS DISCLOSURE:** Plaintiff's Expert Witness disclosure shall be exchanged on or before 9/28/22 (at least 90 days before the close of discovery). Defendant's Expert Witness disclosure shall be exchanged on or before 11/14/22 (at least 45 days before the close of discovery). Rebuttal Expert Witness Disclosure shall be exchanged on or before 11/29/22 (at least 30 days before the close of discovery).

6) **MANDATORY MEDIATION:** A stipulation selecting mediator must be filed on or before 10/28/21. Mediation must be completed on or before 2/23/22.

7) **PROPOSED DATE FOR THE COMMENCEMENT OF TRIAL:** The action will be ready to proceed to trial on or before 1/27/23. It is anticipated that the trial will take approximately 5 days to complete. The parties request that the trial be held in Albany, N.Y. (The proposed date for the commencement of trial must be within 18 months of the filing date).

8) **HAVE THE PARTIES FILED A JURY DEMAND:** X (YES) / _____ (NO).

9) **DOES THE COURT HAVE SUBJECT MATTER JURISDICTION? ARE THE PARTIES SUBJECT TO THE COURT'S JURISDICTION? HAVE ALL PARTIES BEEN SERVED?**

The Π believes subject matter jurisdiction may be premature.
The parties would otherwise be subject to jurisdiction
The proper Δ s have been served

10) **WHAT ARE THE FACTUAL AND LEGAL BASES FOR PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES (INCLUDE COUNTERCLAIMS & CROSSCLAIMS, IF APPLICABLE)?**

Π claims that he fell and was injured due to Δ s' improper loading of the truck.
 Δ asserts that Π and his employer had a duty to inspect and
confirm the safe loading of the truck

11) **WHAT FACTUAL AND LEGAL ISSUES ARE GENUINELY IN DISPUTE?**

Factual and legal issues exist as to how the subject truck was
loaded; whether the truck was improperly loaded or packed; and
the respective duties of the Δ s, Π and Π 's employer to inspect, load
and off-load cargo.

12) **CAN THE ISSUES IN LITIGATION BE NARROWED BY AGREEMENT OR BY MOTIONS? ARE THERE DISPOSITIVE OR PARTIALLY DISPOSITIVE ISSUES APPROPRIATE FOR DECISION ON MOTION?**

yes, it is possible that some issues may be narrowed

13) **WHAT SPECIFIC RELIEF DO THE PARTIES SEEK? WHAT ARE THE DAMAGES SOUGHT?**

Π posits that it is too early to determine the specific relief and damages
sought

14) DISCOVERY PLAN:**A. Mandatory Disclosures**

The parties will exchange the mandatory disclosures required under Rule 26(a)(1) at least **seven (7) days** prior to the date of the Rule 16 conference, unless they have obtained prior approval from the assigned Magistrate Judge to extend that deadline.

B. Subjects of Disclosure

The parties jointly agree that discovery will be needed to address the following subjects:

Damages and it's medical condition and treatment; and comparative liability issues; witnesses; manuals; who packed cargo.

C. Discovery Sequence

Describe the parties' understanding regarding the timing of the discovery, and state whether it is anticipated that discovery will be phased to address different issues in stages.

Written discovery; party depositions; expert discovery and I7E(s).

D. Written Discovery

Describe the written discovery demands which the parties contemplate serving under Rules 33, 34 and 36, including when they will be promulgated, that areas to be covered, and whether there is any need for any party to exceed the number of interrogatories permitted under Rule 33.

Rule 33 interrogatories to cover liability and damages
Rule 34 Requests to cover medical records, any reports and related
Rule 36 Depositions of parties and experts

E. Depositions

Set forth the parties' expectations regarding depositions, including the approximate number to be taken, their location, a general description of the deponents, and an indication of whether any non-party fact depositions are anticipated.

Approximately 6 witnesses, including π , employer, and Δ 's employees

F. Experts

Set forth the parties' expectations regarding the retention of experts, and identify any particular issues to be addressed by the court concerning the retention and exchange of the information regarding experts, including whether the parties seek a variance from the expert disclosure requirements of the form uniform pretrial scheduling order typically issued by the court (i.e., initial expert disclosure at least ninety days, responsive expert disclosures at least forty-five days, and rebuttal reports due at least thirty days, before the close of discovery).

The parties anticipate retaining liability and damages experts, including physicians

G. Electronic Discovery

Set forth the parties' understanding and expectations regarding discovery of electronically stored information. This description should include any agreements reached with respect to the retention of electronically stored information and the manner in which it will be produced, if requested. The parties should also identify any agreements regarding the manner in which electronically stored information subject to claims of privilege or work product protection will be handled, and whether a court order will be requested, either on stipulation or otherwise, to address this issue. If an agreement has been reached on the entry of such an order, provide a brief description of the provisions which will be included in a proposed order.

The parties agree that this is not an ESI-intensive case.

CANNOT BE EVALUATED PRIOR TO _____ (DATE)

HOW CAN SETTLEMENT EFFORTS BE ASSISTED?unknown at this time*(Do not indicate any monetary amounts at this time, settlement will be explored by the Magistrate Judge at the time of the initial status conference)***COMPLETE QUESTION 19 ONLY IF YOUR FILING ORDER COVER SHEET WAS CHECKED AS AN ADR TRACK CASE - Subject to Mandatory Mediation under General Order #47.****19) IF YOUR CASE WAS SELECTED AS A QUALIFYING MANDATORY MEDIATION CASE, CONFIRM THAT YOU HAVE:**

- A. Reviewed General Order #47? YES / NO
- B. Reviewed the List of Court Approved Mediators available on the NDNY website? YES / NO
- C. Prepared to discuss with the Court, at the conference, whether your case should be opted out of the program? YES / NO
- D. Discussed the time frame needed to complete Mandatory Mediation? YES / NO

Pursuant to Fed. R. Civ. P. 26(f) a meeting was held on 7/20/21 at phone and was attended by: _____Peter MacDaniel for plaintiff(s)Mark F. Werle for defendant(s)

(party name)

_____ for defendant(s)

(party name)

At the Rule 16(b) conference, the Court will issue an order directing the future proceedings in this action. The parties are advised that failure to comply with this order may result in the imposition of sanctions pursuant to Federal Rules of Civil Procedure 16(f).

Please detach this case management plan form and file electronically with the clerk no later than seven (7) days in advance of the conference date.

CASE ASSIGNMENT FORM

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

CIVIL ACTION NUMBER 1:21-CV-718, GTS/DJS

ALL CORRESPONDENCE AND FILINGS SHOULD BEAR THE INITIALS OF THE ASSIGNED JUDGE AND MAGISTRATE JUDGE IMMEDIATELY FOLLOWING THE CIVIL ACTION NUMBER.
(IE: CIVIL ACTION NO 5:11-CV-0123, NAM-DJS)

DOCUMENTS SHOULD BE FILED IN ACCORDANCE WITH GENERAL ORDER #22.

ACTION ASSIGNED TO THE JUDGE AND MAGISTRATE JUDGE CHECKED BELOW:

		INITIALS
<u> X </u>	CHIEF JUDGE GLENN T. SUDDABY	(GTS)
<u> X </u>	MAGISTRATE JUDGE DANIEL J. STEWART	(DJS)

PRO SE LITIGANTS:
SEND ALL ORIGINAL PAPERS TO THE CLERK'S OFFICE LISTED BELOW:

Clerk, U.S. District Court
Federal Building & Courthouse
P.O. Box 7367
Syracuse NY 13261-7367

All papers filed with the Court must conform to Local Rule 10.1

~ COUNSEL ~

**ALL DOCUMENTS SHALL BE FILED ELECTRONICALLY
ON THE COURT'S CM/ECF SYSTEM**

**PLEASE REFER TO GENERAL ORDER #22
FOR PROCEDURES FOR FILING DOCUMENTS ELECTRONICALLY**

**CONSENT TO THE EXERCISE
OF CIVIL JURISDICTION BY A MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. Section 636(c), you are hereby notified that the United States Magistrate Judges of this district court, in addition to their other duties, may, upon consent of all the parties in a civil case, conduct any or all proceedings in the case, including a jury or non jury trial, and order the entry of a final judgment.

You should be aware that your decision to consent to the referral of your case to a United States Magistrate Judge for disposition is entirely voluntary and should be indicated by counsel endorsing the attached consent form for the plaintiff(s) and defendant(s). If the form is executed by all counsel for the parties (or by the parties if appearing pro se), it should be communicated solely to the clerk of the district court. ONLY if all the parties to the case consent to the reference to a magistrate judge will either the judge or magistrate judge to whom the case has been assigned be informed of your decision.

Your opportunity to have your case disposed of by a magistrate judge is subject to the calendar requirements of the court. Accordingly, the district judge to whom your case is assigned must approve the reference of the case to a magistrate judge for disposition.

In accordance with 28 U.S.C. Section 636(c) (3), an appeal from a judgment entered by a magistrate judge will be taken to the United States Court of Appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court. See Also L.R. 72.2(b)(5).

Copies of the consent form are available in any office of the clerk of the court and on the court webpage at
www.nynd.uscourts.gov

****ATTACHED FOR YOUR CONSIDERATION IS A BLANK CONSENT FORM****